

The Ethics of One Stop Delivery

Introduction

- One-Stops are required to be accessible to individuals with disabilities
 - Infrastructures
 - program access
- Increased flexibility in WIA does not relieve WIA of fair and equitable access to all services, programs and facilities
 - both sexes,
 - various racial and ethnic groups
 - differing age groups
 - individuals with disabilities.

Introduction

- Increased demand on One-Stop systems to serve people with disabilities.
- Section 188 regulations provide that
 - One-Stop delivery systems cannot rely on Vocational Rehab to provide services to individuals with disabilities.
 - One-Stops delivery have an affirmative obligation to administer their programs “in the most integrated setting appropriate to the needs of qualified individuals with disabilities”
 - One-Stops cant *require* individuals to participate in special programs such as Vocational Rehabilitation programs, but must offer them the opportunity to participate in the same programs and activities as they offer to individuals without disabilities. (See, e.g., 29 CFR 37.7(d).)

Federal Regulations on Discrimination 29 CFR 37

- Purpose

- To implement the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998 section 188 of WIA.
- Section 188 prohibits
 - discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and
 - for beneficiaries only, citizenship or participation in a WIA Title I- financially assisted program or activity.

Who is covered by the regulations?

- Programs and activities that are part of the One-Stop delivery system and operated by One-Stop partners listed in section 121(b) of WIA
- The employment practices of a recipient and/or One-Stop partner
- Recipients that are also employers, employment agencies, or other entities covered by Title I of the ADA should be aware of obligations imposed by that title.

Analysis

- The discrimination laws apply to
 - Decisions related to support service awards
 - Decisions related to training awards
 - To the training providers
 - To one stop operators
 - To one stop partners

What do you think?

- Reginald has registered for WIA services and asked for funds to buy tags and license for his car. His support service request is approved but the car then doesn't work. The local area has a policy of only one support service in a category every twelve months and denies his request. He appeals.

Definitions

- Applicant
 - an individual who applies for WIA Title I--financially assisted aid, benefits, services, or training and who has submitting personal information as a part of the eligibility process
- Applicant for employment means a person who applies for employment with a recipient of Federal financial assistance under WIA Title I.

Applicant

- In the resource room...
- At WIA eligibility determination...
- Applying for a job at the one stop center
 - Applicant?

What Do You Think?

- As Ricardo comes into the one stop he refuses to do a job search stating that “he knows what he wants and what he is entitled to.” He insists on immediately seeing a counselor who interviews him and decides that Ricardo is not ready for training and so refuses to register him. Meanwhile as Ricardo looks around the one stop he overhears other individuals being awarded an ITA. He files a complaint.

What Do You Think?

- Will your decision be affected regarding Ricardo if there is not any more training dollars in the Workforce Area?

What Do You Think?

- Ivana is hearing impaired. She tells her counselor she has no disability and insists that her file reflect that she has no disability. She registers for LPN training and soon realizes she needs an interpreter. Her counselor refuses stating that her file indicates that she has no disabilities

Definitions - Disabled

- A physical or mental impairment substantially limits one or more of the major life activities of such individual;
- a record of such an impairment
- being regarded as having such an impairment.
 - physical or mental impairment means
 - physiological disorder or condition
 - cosmetic disfigurement,
 - anatomical loss affecting a bodily system
 - mental retardation,
 - organic brain syndrome
 - emotional or mental illness,
 - specific learning disabilities.
 - contagious and non-contagious diseases
 - HIV disease (whether symptomatic or a symptomatic)

What Do You Think?

- Dick works in the one stop resource room. When working with the clients he chats and over sees their job search, joking with them and trying to make them feel at ease. When individuals confess that they have a disability, Dick tells them not to be too optimistic about getting a job.

Definitions – Disabled

- Has successfully completed a drug rehabilitation program and is no longer using illegal drugs
- Is participating in a supervised rehabilitation program
- Is erroneously regarded as engaging in such use, but is not engaging in such use,
- it is not a violation of the nondiscrimination and equal opportunity provisions of WIA for a recipient to adopt or administer reasonable policies or procedures, including
 - drug testing, designed to ensure an individual is no longer engaging in the illegal use of drugs.

Disabled - Analysis

- Youth provider
 - Wants to drug test youth
 - Wants to dismiss a youth for drug use

What Do You Think

- The workforce area drug tests everyone prior to referring them for any services
- The workforce area only test those individuals who seem rather questionable.
- Harry has been drinking for years. He gets his work done and is never late or out except for earned vacation. A new program manager is hired and he wants Harry out. Can he fire Henry even though he performs his job without mistakes or incident?

Definition - Disabled

- Does not include
 - homosexuality or bisexuality.
 - Transvestites, transsexuals
 - Pedophilia
 - exhibitionism,
 - Voyeurism
 - gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
 - Compulsive gambling, kleptomania, or pyromania; or
 - substance use disorders resulting from current illegal use of drugs.

Definitions - Disabled

- Homosexuality or bisexuality
 - Many States and localities have laws prohibiting discrimination
 - May not fall under disabled but may fall under gender based statutes
 - Difference
 - Accommodation v an act of commission or omission

Definitions

- Regarded as having an impairment
 - Has a physical or mental impairment that does not substantially limit major life activities but that is treated by the recipient as having the limitation
 - Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
 - Has no impairments but is treated by the recipient as having such an impairment.

Perceived by the public

- A local private proprietary school discourages individuals they suspect to be homosexual from attending their school because they are worried about aids
 - Is this situation covered?

What Do You Think?

- Your new resource room counselor Julie is really hot. The clients love her. One day you pass her in the hall where she is holding her hair in her hand and you realize that she is a cross dresser. You tell her she needs to come to work as a he not a she.
- Julie files a grievance

Definitions - Disabled

- As it applies to employment
 - does not include any individual who is an alcoholic:
 - Whose use of alcohol prevents the individual from performing the duties of the job in question
 - Whose employment, would be a threat to property or the safety of others
 - Has a currently contagious disease or infection, if
 - That disease or infection prevents him or her from performing the duties of the job in question, or
 - Their employment, because of that disease would threaten the health and safety of others.

Definition

Qualified individual with a disability

- With respect to employment
 - an individual with a disability who, with or without reasonable accommodation can perform the essential functions of the job
- With respect to aid, benefits, services, or training,
 - an individual with a disability who, with or without reasonable accommodation and/or reasonable modification, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

Discrimination on the ground of citizenship

- A denial of participation in programs or activities under Title I of WIA on the basis of an individual's status
 - as citizens or nationals of the United States
 - lawfully admitted permanent resident aliens, refugees, asylees, and parolees
 - or other immigrants authorized by the Attorney General to work in the United States.

What Do You Think?

- Aman applies for flight school training. It is an occupation in demand. You are hesitant since 9/11 and are not sure what to do.
- Norma Jean has applied for WIA services. She shows you her welfare card when applying for adult services and you inquire as to how she will support herself while she is in school. She says don't worry my boyfriend will support me.

What Do You Think

- You are the One Stop Operator
 - Your contract is performance based. As a private organization you are not subject to the usual requirements applicable to public records. To assure that you make money you decide to pay everyone under 30 and all the women less than all other individuals doing the same work

Definitions - Facility

- All or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, rolling stock or other conveyances, or other real or personal property or interest in such property, including the site where the building, property, structure, or equipment is located.
- real or personal property" includes indoor constructs that may or may not be permanently attached to a building or structure.
 - office cubicles
 - computer kiosks
 - similar constructs.

Facilities – An analysis

- Affiliates
- Satellites
- Partner sites providing electronic access
- Kiosk locations

Definitions – Financial Assistance

- Any grant, sub grant, loan, advance
 - to any entity for payment to or on behalf of participants for training
 - To a participant
- Provision of other item of value to or on behalf of a participant
- Provision of the services of Federal personnel, or of other personnel at Federal expense;

Definitions - Fundamental alteration

- A change in the essential nature of a program or activity such as an aid, service, benefit, or training; or
- A cost which would be an undue burden.
 - The nature and cost of the modification
 - The number of persons aided, served, trained or employed at the facility
 - effect of the modification on the expenses and resources of the facility

Definitions - Fundamental alteration

- The overall financial resources of the facility
 - The overall size of the recipient;
 - The number of persons aided, benefited, served, trained, or employed by the recipient
 - The number, type and location of the facilities;
 - The type of operation
 - geographic separateness
 - administrative or fiscal relationship of the facility to the recipient;

Definitions - Fundamental alteration

- the modification sought is employment-related
 - composition, structure and functions of the recipient's workforce
 - the impact of the modification upon the operation of the facility
 - the ability of other participants to receive aid, benefits, services, or training, or
 - of other employees to perform their duties
 - impact on the facility's ability to carry out its mission.

Analysis

- Geographic location
- Impact on other participants
- The number of participants affected
- Question
 - In closing sites must access be considered?
 - There is an influx of immigrants into your community at what point would non English materials be required?

Reasonable accommodation

- Modifications or adjustments to an application /registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training or employment
- Modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities.

Reasonable accommodation

- Modifications or adjustments may be made to:
 - The work environment, aid, benefits, services, or training
 - The customary way a job is performed or aid, benefits, services, or training are given

Accommodations

- Modifications or adjustments that enable a qualified individual with a disability to enjoy the same aid, benefits, services, training, or employment as individuals without disabilities.
- Reasonable accommodation includes, but is not limited
 - Making facilities used by applicants, registrants, accessible to and usable by individuals with disabilities
 - Restructuring a job or a service, or aid, benefits, or training is/are provided
 - part-time or modified work or training schedules
 - acquisition or modification of equipment or devices
 - appropriate adjustment or modifications of examinations, training materials, or policies
 - the provision of readers or interpreters

Accommodations

- Law only protects disabled individuals who can perform the job – are qualified
 - With or without the accommodation
 - If the job cant be done even with accommodation the employee loses

Behavior Prohibited Under WIA

- No individual in the United States may, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title I--financially assisted program or activity,
 - be excluded from participation in,
 - denied the benefits of,
 - subjected to discrimination under,
 - or denied employment in the administration of or in connection with any WIA Title I--funded program or activity.

Behavior Prohibited Under WIA

- On Discrimination basis
 - deny an individual services, or training under a WIA Title I
 - Provide services or training that is different, or is provided in different manner, from that provided to others under a WIA Title I
 - Subject an individual to segregation or separate treatment in receipt of services, or training under a WIA Title I
 - Treat an individual differently from others in determining eligibility or admission
 - Deny or limit an individual with respect to any opportunity to participate in a WIA Title I
- Deny membership on a Board

Discrimination

- Recipients can't aid or perpetuate discrimination by providing significant assistance to an agency, organization, or person that discriminates on a prohibited ground
- Activities to watch out for:
 - Outreach and recruitment
 - Registration
 - Counseling and guidance
 - Testing
 - Selection, placement, appointment, and referral
 - Training
 - Promotion and retention.

Discrimination

- In speaking with an OJT employer he smirks, pokes you in the shoulder and says
 - Send me some girls who are stacked
 - Can you only send me men
 - No ex offenders
 - No foreigners

WIA Requirements

- communications with the disabled are as effective as communications with others.
- furnish appropriate auxiliary aids or services where necessary auxiliary aid or service is appropriate
- the recipient must use telecommunications devices for individuals with hearing impairments (TDDs/TTYs), or equally effective communications systems, such as telephone relay services.
- Visually or hearing impaired can obtain information
- as to accessible services, activities, and facilities.
- signage at the entrance to each inaccessible facilities, directing users to accessible facilities.

Intimidation and retaliation

- A recipient intimidate, retaliate, threaten, coerce or discriminate against any individual because the individual has:
 - Filed a complaint alleging a violation of Section 188 of WIA or
 - Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIA
 - Furnished information to, or assisted or participated in any manner in, an investigation

Intimidation

- A counselor tells his client that since he has filed a complaint against him he no longer wants to work with the client and the client has been reassigned

Equal Opportunity

- All recipients must assign an EEO Officer
- All recipients must post EEO and anti discrimination
 - in reasonable numbers and places;
 - Disseminated in internal memoranda and other written or electronic communications;
 - include in handbooks or manuals; and
 - Made available to each participant, and made part of each participant's file.
- The notice must be provided in appropriate formats to individuals with visual impairments.

Notice Requirements

- “equal opportunity employer/program,” and that “auxiliary aids and services are available upon request to individuals with disabilities,” in recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large, to describe programs financially assisted under Title I of WIA or the requirements for participation by recipients and participants. Where such materials indicate that the recipient may be reached by telephone, the materials must state the telephone number of the TDD/TTY or relay service used by the recipient, as required by Sec. 37.9(c).

Recipient's responsibility to provide services and information in languages other than English

- If a significant number of the eligible population for WIA Title I needs services in a language other than English recipients must review
 - The scope of the program or activity, and
 - The size and concentration of the population that needs services in a language other than English;
 - take reasonable steps to provide services and information in appropriate languages including the required notices

Recipient's responsibility to provide services and information in languages other than English

- In circumstances where it can be justified not to provide the services in another language a recipient should nonetheless make reasonable efforts to meet the particularized language needs of limited-English-speaking individuals who seek services or information from the recipient.

Question

- New census data shows that the non English speaking population of an area now comprises more than 10% of the population
 - Is this substantial
 - What if the eligible population is only 5%
 - What if the workforce area is very small and has a limited allocation

Requirements to communicate information during orientations?

- During orientations Recipients must include a discussion of rights under the nondiscrimination and equal opportunity provisions of WIA including the right to file a complaint of discrimination with the recipient or the Director.

Access to Programs

- Recipients must take steps to ensure they are providing universal access under WIA Title I
 - reasonable efforts to include both sexes
 - various racial and ethnic groups
 - individuals with disabilities
 - individuals in differing age groups.
 - Advertising recipient's programs and/or activities in newspapers or radio, that specifically target various populations;
 - Sending notices about openings to schools or community groups that serve various populations
 - Consulting with appropriate community groups about ways the recipient may improve its outreach and service to various populations.

What Do You Think?

- A program operator is not performing. They claim that it is because they are serving non English speakers and they do not have a viable curriculum. They want to be excused from performance.

What do you think?

- Lolita speaks English quite well even though it is her second language. After assessment her counselor engages her in conversation and tells her that while her English is quite good she might enjoy a class where there are “many of her own kind in attendance.” When Lolita says what do you mean the counselor says, “you know non Americans, people who don’t speak English.”

Sexual Harassment

- Two Types

- Quid Pro Quo

Supervisor or manager condition employment or
Counselor conditions services on a sexual
behavior

- Hostile Offensive Work Environment
by coworkers, customers, contractors

Sexual Harassment

- The Center Supervisor promises a counselor a good review if she will have dinner with him
- During an interview with a client the counselor places his hand on the client's knee, inquires whether she is sexually active and kisses her before she leaves

Sexual Harassment

- John the Center Accountant flirts with Jane at the coffee machine every day. Jane is a data entry clerk. Jane never tells John to stop. After six months Jane files a complaint.
- Is Jane a winner?

Sexual Harassment

- When is conduct harassment
 - Substantially affect the work environment
 - Pattern of repetitive conduct
 - Perpetuated by a coworker or supervisor
 - Others join in
 - Single instance of severe conduct

Pregnancy Discrimination

- Pregnancy, childbirth, related medical conditions
 - Can you exclude someone from training because
 - they are pregnant
 - They have an infant
 - They have many children

What Do You Think?

- Upon hearing that her client a single mother with 5 children was pregnant again, the counselor replied, “haven’t you ever heard of birth control, there is no job we can train you for which will be able to support you and your soon to be 6 children.”

Release of Information Forms

- Information on the form
 - Client Name
 - Address
 - Social Security No.
 - A statement indicating client understands significance of the release
 - Client can see their file
 - Client can get a copy of their file
 - Client acknowledges that the information is confidential
 - By signature agrees to the release

Release of Information - Form

- List items of information in file
 - Client initials each item authorized for release
 - Eligibility Information including income, social security number, I-4 or I-9 status information
 - Alien Status information
 - Family Income Information and work history for my self and my family
 - Family Member Information
 - Case notes
 - Services provided
 - Grades or progress reports contained in my file

Release of Information - Form

- **List items of information in the file**
 - **Medical reports including psychological evaluations**
 - **Exclude any information on substance abuse or domestic violence.**
 - **Do not release any information on substance abuse or domestic violence except to the participant directly**
 - **Assessment Information - tests**
 - **Notes of telephone conversations**
 - **Computer Printouts related to participation**
 - **Support services**
 - **Case notes**
 - **Other**

Release of Information - Form

- I _____ hereby release _____, their officers, directors, employees, agents, designees, the Workforce Board, the One Stop Operator, including their employees, officers, directors, agents, and other state and local officials, employees, agents, designees, who may have placed information in my file from any responsibility for damages resulting from their provision/release of such information.
- Authorization valid for 90 days from date of signature

Release of Information - Form

- Signature
- Date
- Witness
- Date
- Identification

What Do You Think?

- The police come to the one stop center and demand that a client file be handed over to them a la Law and Order?
- A client's mother comes in for her daughter's file explaining that her daughter is sick and needs a copy of her records
- A lawyer calls and demands Mr. X's file saying he is the individual's lawyer

Issues Which May Not Be Subject to Grievance Procedures

- There may not be sufficient funds to provide you with a service
- Local areas have the flexibility to decide the types and mix of services to offer in their localities. The local area decided not to offer a particular benefit or service.
- Individuals seeking services who do not meet the eligibility or prioritization criteria,
- Local WorkForce Boards have the flexibility to impose requirements or to develop policies and procedures applicable to the programs and services.

Grievances

- Short Form
 - Statement of Complaint
 - Statement of Relief Requested
 - Each side agrees on a hearing officer
 - Both individuals appear and tell their story
 - They can bring witnesses and documents
 - They can be represented
 - The hearing officer rules

What Do You Think

- Joan was recently laid off by Enron
- She was a high level executive
- She has enrolled in law school and wants the local area to pay
- Law school is not on the EPTL list nor is law a demand occupation. She is denied, and she grieves
- What does the local area need to win?

Common Risk Areas

- Confidentiality
- Release of Information
- Grievance Procedures
- Accommodations
- Civil Rights Issues
- Due Process
- Denial of Services
- Use of the facilities
- Customer Service